

MONTANA LEGISLATIVE HISTORY

Chapter 659 19 85

Bill H 686 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 22 ✓ C

Feb 23 ✓ C

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_____ C

Date Out Feb 23 ✓ C

S. Committee on Public Health Welfare & Safety

Hearing Date(s) Mar 20 ✓ C

Mar 23 ✓ C

Mar 27 ✓ C

_____ C

Mar 27 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

(To be kept current -- post bills when entering being heard or leaving committee.)

Form CS-32

STATUS SHEET

FORTY-NINTH

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 681	2/5/85	2/8/85 2/7/85	2/8/85			2/8/85			
HB 186	2/5/85	2/7/85 2/8/85	2/8/85			2/8/85			
HB 686	2/6/85	2/22/85 2/23/85	2/23/85			2/23/85			
HB 700	2/7/85	2/18/85	2/18/85			2/18/85			
HB 706	2/7/85	2/18/85	2/18/85	2/18/85					
HB 710	2/7/85	2/18/85	2/18/85			2/18/85			
HB 712	2/7/85	2/18/85	2/18/85			2/18/85			
HB 714	2/7/85	2/18/85 2/20/85	(Tabled 2/20/85)	2/20/85	(Sent out to floor	2/25/85)			
HB 341	2/7/85 (re-referred)	2/16/85	2/16/85	2/16/85					
HB 717	2/8/85	2/19/85	2/19/85			2/19/85			
HB 722	2/8/85	2/19/85	2/19/85			2/19/85			
HB 726	2/8/85	2/19/85	2/19/85	2/19/85					
HB 447	2/8/85 (referred back to committee)	2/18/85				2/18/85			
HB 738	2/9/85	2/19/85	2/19/85			2/19/85			
HB 742	2/9/85	2/19/85	2/19/85		2/19/85				
HB 744	2/9/85	2/20/85	2/20/85	2/20/85					

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 22, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, February 22, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown who was previously excused.

CONSIDERATION OF HOUSE BILL NO. 686 and 665: Rep. Nancy Keenan, House District #66, chief sponsor of these bills, testified. House Bill 686 revises the procedures relating to the filing and conduct of child abuse, neglect, or dependency proceedings. Section 1 provides for an extension allowing that petitions can be filed not only by the county attorneys but by the attorney general or an attorney hired by the county welfare department. She said that oftentimes, a county attorney cannot handle his heavy caseload, and this provides a safety valve proceeding. She went over the other provisions that the bill provides. House Bill 665 is an act to revise the procedures involved in terminating the parent-child legal relationship.

Noel Larrivee, an attorney from Missoula, testified as a proponent to HB 686 and HB 665. He described some of the problems that he has observed with regards to allowing only the county attorney to be able to file these petitions. He briefly addressed the rest of the changes as provided in HB 686 which he described as mostly housekeeping measures.

John Madsen, representing the Department of Social and Rehabilitation Services, stated that the department supports all the changes requested in HB 686. He said the changes made on page 1, lines 24 and 25, are for the benefit of the protection of the child. Also, on page 5, the changes made are not only a protection for the child, but more importantly the protection of the parent to fully understand what the allegations are that have been brought against him and what the court has required them to do.

Warren Wright, representing the Missoula Child and Family Resource Council who has also worked for the Department of S.R.S. for 11 years as an investigator and treater of child abuse and neglect, testified as a proponent. One of the three areas he wished to concentrate on has to deal with the ability to hire an attorney to represent local offices. The second issue deals with a time limit which is absolutely

necessary. He feels that there are certain incidences when the court should have the leeway to say that a treatment plan is not appropriate in a particular case.

There being no further proponents or opponents, Rep. Kennan closed.

The floor was opened for questions.

Rep. Keyser feels that the amendment proposed by Mr. Larrivee to amend page 1, line 13 by inserting following "department" the words "or office of human services" would grant some of the broadest powers he has ever seen granted to a state agency. They may require all state agencies, all county and municipal agencies including law enforcement agencies to conduct such an investigation and furnish the department reports as may be necessary. He has never heard of such a broad-sweeping request in the name of an act to protect youth. He hopes that by adopting this language, we are not creating a monster. In response, Mr. Larrivee doesn't feel that a monster is being created. He doesn't feel there will be a problem with an attorney telling law enforcement how to do their jobs. You have a situation where if one person doesn't act, nothing happens, and the child is left in an environment that is either abusive or neglectful. If no action is taken, unless some sort of safety valve is provided for that, social workers will be able to go and have the petition filed, the abuse of these children will continue by leaving those children in that particular home. There simply isn't any other method available besides the method being proposed here, stated Mr. Larrivee.

Rep. Keyser argued that the law, the way it is written with Mr. Larrivee's proposed amendment, absolutely gives an attorney hired by the county welfare department and/or the office of human services the right to do exactly that. He has no problem with allowing the attorney general to do this, but when referring to the county welfare department and the office of human services, he sees a big problem.

Rep. Hannah asked Mr. Larrivee if he was, in fact, telling this committee that county attorneys are not taking child abuse cases seriously by not filing petitions thereby requiring that authority be given to the county welfare department. Mr. Larrivee said that you can go to any county and talk with any front-line social worker, and they will give you instance after instance of where they have gone to the county attorney's office, and for whatever reasons, the case was not filed.

Rep. Krueger has a concern with regards to the time frame of 60 days on page 2, line 16 of SB 665. He wanted Mr. Larrivee to comment on this. Mr. Larrivee said that Rep. Krueger indicated

that it is legally possible to go into court and file just a petition for termination of parent/child legal relationship under Chapter 6 of this particular section. What this particular change would do then is mandate a hearing within 60 days if that were to occur. The chances of that occurring is actually remote. In terms of a time period of 60 days versus 180 days, Mr. Larrivee stated that he is not sure where the magical figure is. He feels that the answer lies somewhere in-between.

There being no further questions, hearing closed on HB 665 and 686.

CONSIDERATION OF HOUSE BILL NO. 793: Rep. Nancy Keenan, House District #66, chief sponsor of HB 793, testified in support of the bill. She said this is an act defining domestic violence. Section 46-6-401 is being amended to include domestic violence as reasonable grounds in that particular section, defining what domestic violence is and requiring that a written report of the peace officers be submitted. When she was researching this issue, she found no documentation on how many cases law enforcement was called to and if it was documented domestic violence. It was documented as disturbance. There are not statistics in this state that can be drawn from other than when a case is filed as a homicide. She stated that 60% of all married women are subject to domestic violence at one time during their life. Twenty percent of women are beaten regularly. She feels that this bill provides a deterrent.

Amy Pfeifer, representing the Women's Law Caucus at the University of Montana School of Law, testified as a proponent to this legislation. She said that family violence occurs in this country at staggering proportions. Each year thousands of men, women, and children must deal with the tragedy of family violence. She urged the committee to support HB 793.

Caryl Wickes Borchers, representing the Montana Coalition Against Family Violence, testified as a proponent to HB 793. A copy of her written testimony was submitted and marked Exhibit B and attached hereto.

Melinda (she gave no last name) from Great Falls, testified in support of this bill. A copy of her written testimony was marked Exhibit C and attached hereto.

(Rep. Brown came in.)

Boyce Fowler, program manager of domestic violence, Department of S.R.S. urged the committee to pass HB 793. Although this bill does not affect the operation of the Domestic Violence Program, it does affect the client/clientele certified shelters and the programs.

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 23, 1985

An executive session of the Judiciary Committee was called to order by Chairman Tom Hannah on Saturday, February 23, 1985 at 12:00 o'clock noon in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Reps. Darko and Poff who had been previously excused, and who had left their proxy votes with the chairman.

ACTION ON HOUSE BILL NO. 665: Rep. Hammond moved that HB 665 DO PASS. The motion was seconded by Rep. Eudaily.

Rep. Hammond moved on page 2, line 19 following "department" insert "or office of human services". The motion was seconded by Rep. Miles and carried unanimously.

Rep. Kreuger further moved on page 2, line 16 by striking "60" and inserting "180". The motion was seconded by Rep. Montayne.

The question was called, and the motion to amend carried unanimously.

Rep. Hammond further moved that HB 665 DO PASS AS AMENDED. The motion was seconded by Rep. Miles and discussed.

Rep. Hannah stated his concern with extending the time frame from 60 days to 180 days. He was concerned with the child involved and how the increase in time frame may affect the child.

It was Rep. Krueger's position that extending the time frame would be in the best interests of the child.

The question was called, and the DO PASS AS AMENDED motion carried 14-4. (See roll call vote.)

ACTION ON HOUSE BILL NO. 686: Rep. Hammond moved that HB 686 DO PASS. The motion was seconded by Rep. Miles.

Rep. Hammond moved on page 1, line 13 following "department" to insert "or office of human services". This motion would extend to other parts in the bill where the office of human services is appropriate. The motion was seconded by Rep. Addy and discussed.

Rep. Keyser spoke against the motion to amend. He feels that by adopting this amendment, the Department of Social and Rehabilitative Services would be given way too much power.

Rep. Addy pointed out that from the prior testimony given, the county welfare department has been called the office of human services. He said this amendment is simply trying to clarify the bill where there is no present explanation.

The question was called, and the motion carried on a voice vote with Reps. Keyser, Hannah, Gould, Brown, Montayne and O'Hara dissenting.

Rep. Hammond further moved that HB 686 DO PASS AS AMENDED. The motion was seconded by Rep. Miles.

Rep. Cobb moved to insert the language "with the consent of the county attorney" on page 1, line 15 of the bill. He feels the county attorney should be allowed some discretion. The motion was seconded by Rep. Keyser.

Rep. Mercer moved to include "attorney general" in Rep. Cobb's amendment. There being no objection to said motion, "attorney general" was included in addition with the county attorney.

The question was called, and the motion to amend carried unanimously.

Rep. Hannah wanted to know if there would be an increase in the number of cases filed if this bill is passed.

It was Rep. Krueger's opinion that the number of cases filed wouldn't necessarily increase.

Rep. Addy said that there are plenty of safeguards present to prevent any potential abuse.

Rep. Addy moved that HB 686 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond. The question was called, and the motion carried 14-4. (See roll call vote.)

STANDING COMMITTEE REPORT

23

February 27, 1985

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MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 326

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REVISE PROCEDURE CONCERNING ABUSE, NEGLECT, OR DEPENDENCY
PROCEEDINGS

Respectfully report as follows: That HOUSE Bill No. 326

be amended as follows:

Page 1, line 13.

Following: "department"

Insert: "or office of human services"

2. Page 1, line 13.

Strike: "He"

Insert: "The county attorney or attorney general, or an attorney
hired by the county welfare department or office of human
services with the written consent of the county attorney
or attorney general."

3. Page 4, line 13.

Following: "department"

Insert: "or office of human services"

DO-PASS

(continued)

page 2 of 2
HB 626

4. Page 4, line 22.

Strike: "or"

5. Page 4, line 23.

Following: "attorney"

Insert: ", or office of human services attorney"

4-12-83
AND AS AMENDED,
DO PASS

CHAIRMAN--JACOBSON, JUDY
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: M-W-F

TIME: 12:30-2:30 P.M.

SECRETARY-GRAVELEY, ELAINE

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0588	2/19	3/08	3/08	CONCUR		3-8
GOULD, R. BUDD			RELATIVE NEED NOT BE TOLD OF ADMISSION TO ALCOHOLIC TREATMENT FACILITY			
HB0595	2/19	3/06		CONCUR		3-6
BRADLEY, DOROTHY			SOCIAL WORKERS AS PROVIDERS OF MEDICAL ASSISTANCE UNDER MEDICAID			
HB0605	2/16	3/06		CONCUR		3-6
CONNELLY, MARY ELLEN			DEPARTMENT OF INSTITUTIONS AUTHORITY OVER CHEMICAL DEPENDENCY COURSES			
HB0623	2/21	3/15	3/18	CONCUR		3-18
WALLIN, NORM			REVISE PROCEDURE FOR ISSUING HEALTH FACILITY AUTHORITY BONDS			
HB0627	3/06	3/20	3/23	CONCUR		3-23
KEENAN, NANCY			DUTIES AND RESPONSIBILITIES OF GUARDIAN AD LITEM			
HB0646	2/22	3/15	3/18	CONCUR		3-18
RAPP-SVRCEK, PAUL S.			TRUTH IN LABELING FOR ORGANIC FOODS			
HB0649	3/05	3/11	3/13	CONCUR AS AMENDED		3-13
MOORE, JACK K.			GENERALLY REVISE THE LAWS GOVERNING THE PRACTICE OF DENTURITRY			
HB0665	3/05	3/20	3/23	CONCUR		3-23
KEENAN, NANCY			REVISE PROCEDURE FOR TERMINATING PARENT-CHILD RELATIONSHIP			
HB0676	3/05	3/22	3/25	CONCUR AS AMENDED	FINANCE & CLAIMS	3-25
DONALDSON, GENE			REGULATION OF UNDERGROUND STORAGE TANKS			
HB0686	3/05	3/20	3/23 3/27	CONCUR AS AMENDED		3-27
KEENAN, NANCY			REVISE PROCEDURE CONCERNING ABUSE, NEGLECT, OR DEPENDENCY PROCEEDINGS			
HB0711	3/04				NATURAL RESOURCES	
COHEN, BENJAMIN R. (BEN)			ALLOWING COUNTIES TO ADOPT DHES MODEL RULE BANNING DETERGENT PHOSPHATES			

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 20, 1985

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Judy Jacobson on Wednesday, March 20, 1985 in Room 410 of the State Capitol at 12:30.

ROLL CALL: All members were present. Senators Lynch and Newman arrived late. Karen Renne, staff researcher, was also present.

There were numerous people in attendance. See attachments.

CONSIDERATION OF HOUSE BILL 627, 665, and 686: Representative Nancy Keenan of House District 66 in Ananconda, the chief sponsor of the bills, gave a brief resume of the them. She stated that since the bills are considered a package she would like to handle the three together if that was permissible with the chairman of the Committee. Senator Jacobson stated that would be fine.

HOUSE BILL 627 is an act to specify the general duties of a guardian ad litem in cases of child abuse or neglect.

HOUSE BILL 665 is an act to revise the procedures involved in terminating the parent-child legal relationship.

HOUSE BILL 686 is an act to generally revise the procedures relating to the filing and conduct of child abuse, neglect, or dependency proceedings.

Representative Keenan stated that HB 627 simply states that the guardian ad litem in cases of child abuse does not have to be an attorney.

HB 665 is to enable people to get into court more quickly for the protection of the children.

HB 686 is a safety measure which would require the county attorney hired by the county welfare department to file petitions alleging abuse or neglect of a child. This bill would protect both the child and the parents.

Noel Larivee, an attorney in private practice from Missoula, stood in support of the three bills. He stated that HB 627 would place the guardian ad litem as the spokesman for the child and would also state that the guardian ad litem does not need to be an attorney.

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Mr. Larivee stated that HB 665 would allow court proceedings to come about in a more timely manner for the benefit of both the child and the parents. This would require a written report.

He stated that HB 686 allows that if a county attorney fails to file proceedings for the safety of the child in child abuse situations, then the attorney general or an attorney hired by the county welfare may file the petition.

Warren Wright of the Missoula Child and Family Resource Council stood in support of the bills. He stated that HB 627 just spells out the duties of a guardian ad litem which does not have to be an attorney. HB 686 will protect the child and also the parent. Many times abuse cases are ignored and let go on for a long time with nothing being done. An attorney needs to file a petition as soon as possible and the hearing must then be held within 20 days of when the petition is filed. HB 665 would terminate the rights of the parents when a sibling has been killed by the parent, the parent is incarcerated for more than one year or if two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent.

John Madsen, representing the Department of Social and Rehabilitation Services, stood in support of the bills. He stated that HB 627 would enhance children's representation. Parents and children's rights are being protected in these bills. HB 686 will require that a petition be filed in the quickest time possible. These issues need to be dealt with now. It is a real problem with child abuse and neglect.

Senator Gary Aklestad of Senate District 6, stood in support of HB 686. However, he offered an amendment on page 5, line 19, following: "therein"; insert: "The parents must be notified before the terms of the order may be carried out."

Senator Aklestad stated that there was a case in his district where a child had been picked up at school by the authorities and the father did not know for several days, the whereabouts of his child. He felt that this amendment would be for the benefit of everyone concerned and would save the parents a lot of grief, concern and distress.

V

SENATE PUBLIC HEALTH
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With no further proponents, the chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Towe asked if a guardian is necessary in every case. Representative Keenan replied "yes" that it is a federal mandate that each child have a guardian.

Senator Lynch addressed the Aklestad amendment. He stated that he feels that this is being done already as most social workers do notify the parents.

Noel Larivee stated that SRS is obligated to notify the parents.

Senator Towe asked if there have been cases where the county attorney did not file a petition. Mr. Larivee stated that there had been a case where the child of a well known family had been abused shortly before election time. The county attorney did not file the petition and the child was sent out of state until after the election. This bill, HB 686, would give some recourse.

Senator Towe stated that there needs to be proof of abuse or neglect. The child could have the ultimate weapon and destroy his parents life by having an attorney file abuse charge against the parents, when in fact, there had been none.

Senator Hager asked if the court appoints the guardian ad litem. Representative Keenan stated that the court appoints a guardian ad litem for any child alleged to be abused or neglected.

Rachel Leadsimone of Anaconda arrived. She is a guardian in child abuse cases. She explained her duties. She is to represent the child's interests, to conduct investigation into the matter, to visit with the child, read the records, talk with the parents, school officials, foster parents, and others as she feels necessary. She then prepares a file with her statements and files the report.

Senator Hager asked if the guardians are trained in any way. Noel Larivee reported that the guardians do under go training.

Representative Keenan closed. She stated that HB 627, 665, and 686 are a composite package which have been closely reviewed. She urged the Committee to concur with the House on these bills.

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A motion was made by Senator Lynch that HB 627 BE CONCURRED IN. Motion carried.

Senator Jacobson will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 665: Representative Nancy Keenan of Anaconda is the chief sponsor of House Bill 665. This bill is an act to revise the procedures involved in terminating the parent-child legal relationship.

A motion was made by Senator Lynch that HB 665 BE CONCRRED IN. Motion carried.

Senator Jacobson will carry this bill on the floor of the Senate.

DISCUSSION ON HOUSE BILL 686: Representative Nancy Keenan of Anaconda is the chief sponsor of HB 686. This bill is an act to generally revise the procedures relating to the filing and conduct of child abuse, neglect, or dependency proceedings.

The Akelstad amendment was offered. This would require that the parent be notified before the terms of the order may be carried out.

Senator Lynch stated that if the parents are notified first, the child could be in jeopardy.

Senator Jacobson stated that this bill address children's rights as well as those of the parents.

Senator Norman asked if the state has a moral obligation to notify the parents.

Karen will draft amendments which would address the concerns of the Committee and bring them to one of the next meetings for their consideration.

Senator Jacobson stated that she feels that this bill would help the children that need help.

Senator Towe stated that kids have the ultimate weapon and they could ruin the lives of their parents by screaming "abuse" when in fact, there had been none.

A motion was made by Senator Lynch that the bill be passed consideration for the day. Motion carried.

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Senator Stephens stated that there is an ad hoc committee which already does this and, therefore, the bill is not necessary. This bill would just delay matters and be a further duplication of what is already being done.

A motion was made by Senator Stephens that HB 758 BE NOT CONCURRED IN. Motion carried with all present voting "yes" with the exception of Senator Jacobson, who voted "no".

Senator Stephens will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 686: House Bill 686, introduced by Representative Nancy Keenan of Anaconda, is an act to generally revise the procedures relating to the filing and conduct of child abuse, neglect, or dependency proceedings.

Karen explained the proposed amendments.

Senator Jacobson stated that this is a good bill and she would prefer it without the amendments.

A motion was made by Senator Newman that the proposed amendments to HB 686 be adopted. Motion carried.

A motion was made by Senator Newman that HB 686 BE CONCURRED IN AS AMENDED. Motion carried.

Senator Jacobson will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 798: House Bill 758 introduced by Representative Joan Miles of Helena is an act to authorize the Department of Social and Rehabilitation Services to operate community programs for physically disabled persons; to authorize the Department to license community homes for the disabled; to provide for standards for programs, administration, health, and safety for such services and community homes.

Senator Jacobson stated that the money has been removed from the budget for this, however, the federal money will still come through.

Senator Norman asked if there is anything in the bill that mentions just the federal money.

Senator Jacobson stated that this bill covers very necessary programs.

STANDING COMMITTEE REPORT

March 27

1935

MR. PRESIDENT

We, your committee on Public Health, Welfare and Safety

having had under consideration House Bill No. 636

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REVISE PROCEDURE CONCERNING ABUSE, NEGLIGENCE, OR DEPENDENCY PROCEEDINGS

KEEMAN (JACOBSON)

Respectfully report as follows: That House Bill No. 526

be amended as follows:

1. Page 1, lines 14 through 16.

Following: "county attorney" on line 14

Strike: "L"

Insert: "or"

Following: "general" on line 14

Strike: remainder of line 14 through "SERVICES" on line 15.

2. Page 4, line 17.

Following: "county attorney" on line 17

Strike: "L"

Insert: "or"

3. Page 4, lines 18 and 19.

Following: "general" on line 18

Strike: remainder of line 18 through "SERVICES" on line 19

4. Page 5, line 19.

Following: "therein."

Insert: "An attempt must be made to notify the parents or guardian at the same time as the terms of the order are carried out, or as soon thereafter as possible."

XXXXX
DO PASS

XXXXXXXX

AND AS AMENDED
BE CONCURRED IN

SENATOR JUDY JACOBSON

Chairman.